

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

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FEB 17 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of Section 73.202(b) )  
Table of Allotments ) MM Docket No. 98-198  
FM Broadcast Stations ) RM - 9304  
(Cross Plains, Texas et al.) )

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

**REPLY TO OPPOSITION TO JOINT MOTION TO STRIKE**

First Broadcasting Management, L.L.C., WBAP/KSCS Operating, Ltd., Blue Bonnet Radio, Inc. and Hunt Broadcasting, Inc. (collectively "Joint Parties"), jointly, by their counsel, hereby submit this reply to the "Opposition to Joint Motion to Strike" filed on February 3, 1999 by Wagonwheel Broadcasting of Santa Anna ("Wagonwheel"). For the reasons stated, Wagonwheel's proposal to allot Channel 290C2 to Santa Anna should be considered in a separate proceeding. In support hereof, the joint parties states as follows:

1. In its "Joint Motion to Strike Reply Comments of Wagonwheel," the joint parties made two points. First, they observed that ALALATEX had not submitted its own comments in support of Channel 245C3 or any other channel at Cross Plains. Second, the joint parties notified the Commission that Wagonwheel had failed to serve any of the joint parties or their counsel.

2. As for ALALATEX's failure to file its own comments, the joint parties also noted that ALALATEX did provide a statement which was included in each of the respective Counterproposals filed by the joint parties. However, the issue of whether ALALATEX has

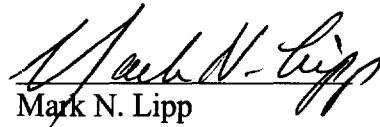
adequately reconfirmed its expression of interest is no longer relevant because counsel to the joint parties has now received service of a filing in which ALALATEX has withdrawn its interest in applying for a Cross Plains station. ALALATEX further states that it did not enter into an agreement with any party to secure its withdrawal. To the extent Section 1.420(j) (5) applies, each of the joint parties hereby state that they have not entered into an agreement of any kind with ALALATEX and therefore no affidavit is necessary. However, an affidavit will be supplied upon the Commission's request. Thus, the Wagonwheel proposal for Channel 290C2 at Santa Anna does not conflict with any proposal before the Commission in this proceeding. Accordingly, there is no basis for including Wagonwheel's proposal for Santa Anna in this proceeding. The joint parties do not object to the allotment of Channel 290C2 to Santa Anna but urge that the proposal be considered in a separate proceeding.

3. Wagonwheel also makes unfounded and unsupported assertions about abuse of process and unethical dealings with ALALATEX. Undersigned counsel hereby states for the record that he has never had any direct contact, written or oral, with any member of ALALATEX. Wagonwheel's unwarranted accusations are a desperate attempt to distract the Commission from the issues raised by the joint parties. There is no scheme or undisclosed attempt to dissuade ALALATEX from supporting a channel allotment for Cross Plains. Undersigned counsel merely observed in the joint filing that ALALATEX failed to submit its own comments. The undersigned counsel has no knowledge of why ALALATEX failed to file separately at the comment stage nor why it withdrew its interest in Cross Plains at this time. Again, undersigned counsel has had no discussions with any member of ALALATEX.

4. As for the failure of Wagonwheel to serve undersigned counsel or any principal of any of the joint parties, Wagonwheel argues that such service "was substantially made" because another counsel to the joint filing was served and that no prejudice resulted. It is not enough to say that service to one counsel to a joint filing is sufficient to accomplish service on another counsel to the filing. Wagonwheel provides no case law to support its theory. Therefore, the filing is ex parte and should be stricken from the record in this proceeding. See Section 1.1216 of the Commission's Rules. The joint parties are indeed prejudiced by having Wagonwheel's participation in this docketed proceeding particularly in view of the fact that its proposal does not conflict with any proposal currently under consideration in this proceeding.

Respectfully submitted,

FIRST BROADCASTING MANAGEMENT, LLC  
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HUNT BROADCASTING, INC.

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February 17, 1999

## **CERTIFICATE OF SERVICE**

I, Kay D. Dallosta, a secretary in the law firm of Shook, Hardy & Bacon, do hereby certify that I have on this 17th day of February, 1999 caused to be mailed by first class mail, postage prepaid, copies of the foregoing **"Reply to Opposition to Joint Motion to Strike"** to the following:

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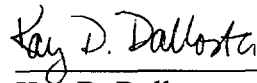
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